

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rosanna Mayo-Coleman

14 CV 0079

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

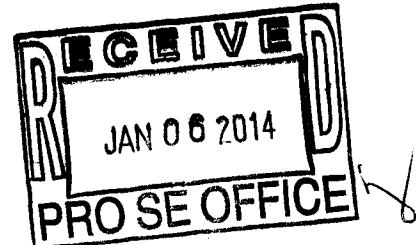
American Sugars Holdings Inc

(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names.
Typically, the company or organization named in your charge to the Equal Employment Opportunity Commission should be named as a defendant. Addresses should not be included here.)

**COMPLAINT
FOR EMPLOYMENT
DISCRIMINATION**

Jury Trial: Yes No

(check one)



This action is brought for discrimination in employment pursuant to: (check only those that apply)

____ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

NOTE: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

____ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634.

NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.

____ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117.

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

____ New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

____ New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131 (actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status).

I. Parties in this complaint:

A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name Rosanna Mayo-Coleman
 Street Address 1629 Broadway #415
 County, City Bronx
 State & Zip Code N.Y 10471
 Telephone Number 347 583-0920

B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant Name Bob Jandovitz
 Street Address 1 Federal Street
 County, City _____
 State & Zip Code _____
 Telephone Number _____

C. The address at which I sought employment or was employed by the defendant(s) is:

Employer American Sugars Holdings Inc
 Street Address 1 Federal Street
 County, City Yonkers
 State & Zip Code 10702
 Telephone Number (914) 709-8014

II. Statement of Claim:

State as briefly as possible the facts of your case, including relevant dates and events. Describe how you were discriminated against. If you are pursuing claims under other federal or state statutes, you should include facts to support those claims. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. The discriminatory conduct of which I complain in this action includes: *(check only those that apply)*

Failure to hire me.
 Termination of my employment.
 Failure to promote me.
 Failure to accommodate my disability.
 Unequal terms and conditions of my employment.

Retaliation.

Other acts (specify):

The Pipe Shop Supervisor was trying to get me in trouble with lies

Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

B. It is my best recollection that the alleged discriminatory acts occurred on: The year of 2012
Date(s) 2013
2014

C. I believe that defendant(s) (check one):

is still committing these acts against me.

is not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check only those that apply and explain):

race _____ color _____

gender/sex Female religion _____

national origin _____

age. My date of birth is _____ (Give your date of birth only if you are asserting a claim of age discrimination.)

disability or perceived disability, _____ (specify)

E. The facts of my case are as follow (attach additional sheets as necessary):

American Sugars discriminated against me by not letting me work on the weekend with the Pipe Shop Told me Because I was a women I couldn't do the work on straight time I have to go and get 2", 3 1/2", 2", 3/4 of pipe for the Pipe Shop I do it on straight time I Should do it

Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights or the New York City Commission on Human Rights.

III. Exhaustion of Federal Administrative Remedies:

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding defendant's alleged discriminatory conduct on: Sept 2013 (Date).

B. The Equal Employment Opportunity Commission (check one):

has not issued a Notice of Right to Sue letter.
 issued a Notice of Right to Sue letter, which I received on 12-21-13 (Date).

Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.

C. Only litigants alleging age discrimination must answer this Question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one):

60 days or more have elapsed.
 less than 60 days have elapsed.

IV. Relief:

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs, as follows: I want 500,000.00 for years

of discrimination and for Sexual Harassment
if Not More And I want to Retire with Full
(Describe relief sought, including amount of damages, if any, and the basis for such relief.)
Pension

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 12-27 day of 2014

Signature of Plaintiff

Address

Rosanna Mayo-Lelman
6629 Broadway #4K
Bronx NY 10471

Telephone Number

(347) 583-0920

Fax Number (if you have one)

on over time. The Company still haven't let me work with the Pipe Shop after I file charges against the Company. The ~~Company~~ American Sugar was told about them discriminating against me and file a grievance on May 4 2012. It took Bob Jandowitz until June to address my grievance which he stated he don't like grievance and to go talk to my supervisor, which is the person who was sexually harassing me which I also reported on May 4th. It was so bad that I went out of work for two months and when I went back to work in Aug 2013 I was still discriminated against but the sexual harassment did stop as of today Jan 7 2014 the Company have yet ask me to work with the pipe shop for fire watch or repairs. My coworkers are still working with the Pipe Shop they are all men.

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Rosanna Mayo-Coleman
6629 Broadway, Apt. 4-K
Bronx, NY 10471

From: New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.
520-2012-03285

EEOC Representative
John B. Douglass, Investigator

Telephone No.
(212) 336-3765

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

More than 180 days have passed since the filing of this charge.

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

The EEOC is terminating its processing of this charge.

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)


Kevin J. Berry,
District Director

11-27-2013
(Date Mailed)

cc: AMERICAN SUGAR HOLDINGS INC.
c/o Peter M. Stein
EPSTEIN BECKER & GREEN, P.C.
One Landmark Square, Suite 1800
Stamford, CT 06901

EPSTEIN
BECKER
GREEN

PETER M. STEIN
TEL: 203.326.7420
FAX: 203.326.7580
PSTEIN@EBGLAW.COM

October 30, 2013

John B. Douglass
Investigator
Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004-2112

Re: Mayo-Coleman v. American Sugar Holdings Inc.
EEOC Charge No. 520-2012-03285

Dear Mr. Douglass:

Epstein Becker & Green, P.C. represents Respondent, American Sugar Refining, Inc. (Domino Sugar, Domino Brands) (“Respondent,” “Company,” or “American Sugar”), in the above-referenced matter. American Sugar respectfully submits this Position Statement in response to the sworn allegations filed by Rosanna Mayo-Coleman (“Claimant” or “Mayo-Coleman”), with the EEOC on September 7, 2012. In her Charge of Discrimination (“Charge”), Mayo-Coleman, a current employee, alleges that the Company violated Title VII and the New York State Human Rights Law (“NYSHRL”), by subjecting her to unlawful sex discrimination, sexual harassment, and retaliation.¹ American Sugar emphatically denies that it has engaged in any unlawful discriminatory or retaliatory conduct against Mayo-Coleman, and provides its detailed response to her claims below.

I. Background

As a preliminary matter, and to provide some historical context for Mayo-Coleman’s current factually unsupported Charge, it is relevant to call attention to her long history of complaints against American Sugar. For example, Mayo-Coleman has filed at least fourteen (14) grievances in which she alleged that she was entitled to, but had been improperly denied, overtime pay or other compensation. With the exception of one sustained grievance, all of those grievances were determined to be unfounded, and contrary to Mayo-Coleman’s ill-conceived contentions, the Company had not violated the Collective Bargaining Agreement (“CBA”).² Additionally, in 1999, Mayo-Coleman pursued a race discrimination Complaint, dual filed with

¹ A copy of Mayo-Coleman’s sworn allegations, dated September 7, 2012, is annexed hereto as Exhibit A.

² A copy of Mayo-Coleman’s Union grievances are attached hereto as Exhibit B.

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the New York State Division on Human Rights (“NYSDHR”) and the EEOC. There too, among other allegations, Mayo-Coleman claimed that she had been improperly denied overtime pay. In 2002, however, the NYSDHR dismissed her Complaint in accordance with a no probable cause determination, and the EEOC adopted that determination.

More recently, on May 4, 2012, Mayo-Coleman submitted a complaint to Human Resources asserting that, despite her greater seniority, she had been improperly bypassed for overtime opportunities in favor of employees in her Department (Engineering Department) with less seniority (“May 4, 2012 complaint”).³ That complaint was disposed of through informal discussions between the Union and Management, and the Union’s agreement that Mayo-Coleman’s complaint was unfounded because the CBA requires overtime assignments to be shared among employees in the Engineering Department, rather than distributed in accordance with seniority.⁴

Fast forward to now, and here, Mayo-Coleman’s Charge presents more of the same. While Respondent cannot profess to have an understanding of Mayo-Coleman’s motivation for pursuing yet another unfounded complaint against American Sugar, it appears that her Charge is based, in large part, on her continued misguided contentions about her entitlement to overtime assignments pursuant to the CBA. Despite the fact that the May 4, 2012 complaint had already been resolved against Mayo-Coleman, her Charge asserts allegations that virtually replicate the allegations of that complaint. Specifically, Mayo-Coleman regurgitates her misconceptions that: (1) the terms of the CBA entitle her to preferential treatment for overtime opportunities based on her seniority status; and (2) the Company violated the CBA when Management allegedly disregarded her seniority and bypassed her for overtime opportunities in favor of employees in her Department with less seniority, and who happen to be male.

What’s new, however, is that Mayo-Coleman’s Charge asserts a discrimination claim alleging that she was denied overtime assignments based on her sex. First, that claim fails because it is inextricably tied to her meritless allegations concerning her contractual entitlement to overtime assignments. Further, that claim also fails because it is based on nothing more than conclusory, self-serving, and factually unsupported allegations.⁵

³ Although Mayo-Coleman’s complaint was not deemed an official grievance by the Company or the Union because she had not followed the grievance procedure required by the CBA, her complaint was nevertheless addressed by the Company and her Union. (Affidavit of Bob Jandovitz, Human Resources Regional Manager (“Jandovitz Aff.”) ¶¶ 3-10, Ex. 2, CBA, Art. 9 (Grievance Procedure); Ex. 3, Mayo-Coleman’s May 4, 2012 Grievance Form.)

⁴ See Jandovitz Aff. ¶¶ 3-10 ; Affidavit of Nicole Copeland, Regional Human Resources Manager (“Copeland Aff.”), at ¶¶ 12-13. See also CBA, Art. 6 (Overtime), attached as Exhibit 2 to the Jandovitz Aff.

⁵ Mayo-Coleman also asserts that she was discriminated against based on her sex because “constant mistakes” were made concerning her pay “that did not get fixed for weeks” and her overtime payments were allegedly held for weeks. However, Mayo-Coleman specifies that her allegations concern adjustments to her pay in 2006, 2007 and 2008. Consequently, those allegations are time-barred by the applicable 300 day statute of limitations.

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Further, Mayo-Coleman's Charge also asserts a sexual harassment claim based on allegations that her then-supervisor, Tyrone Smith, subjected her to isolated, non-continuous, non-threatening sexually offensive conduct.⁶ Mayo-Coleman's sexual harassment claim fails as a matter of law because: (a) she suffered no tangible adverse job action; (b) the alleged sexually harassing conduct was not severe, continuous or pervasive enough, as a matter of law, to create a hostile working environment; (c) American Sugar maintained a reasonable, effective policy and procedure designed to prevent and correct any alleged discrimination or harassment, and (d) Mayo-Coleman unreasonably failed to take advantage of that policy and procedure, and she impeded American Sugar's internal investigation of her claims by refusing to fully cooperate in its investigation.

Finally, Mayo-Coleman's retaliation claim fails as a matter of law because: (a) her allegations are conclusory; and, (b) she can offer no evidence to support her retaliation claim (because none exists).

II. SUMMARY OF RELEVANT FACTS⁷

A. The Parties

1. American Sugar

American Sugar operates as a cane sugar refining company. It produces refined and specialty sugar products in the United States. The Company was founded over one hundred and twenty years ago, in 1891, and is headquartered in Yonkers, New York, which is also Mayo-Coleman's work location.

American Sugar's Policies Against Discrimination, Harassment And Retaliation; Its Complaint Procedure

American Sugar is dedicated to conducting business in a lawful and ethical manner in all of its operations. The Company's Code of Ethics and Business Conduct ("Code") contains a summary of Company policies that set forth the legal and ethical conduct expected of all employees. The Company's policies prohibiting discrimination, harassment, and retaliation are detailed in the Code.

The Code also contains the Company's complaint procedure, which specifically charges employees with the responsibility of reporting any real or potential violation of the Code as follows:

⁶ Tyrone Smith separated employment from the Company on May 13, 2013.

⁷ This Position Statement is not intended as an exhaustive statement of all facts and arguments supporting American Sugar's position in this matter. American Sugar reserves the right to provide such other information in the future as may be warranted.

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If you know of or suspect a real or potential violation, you must report it. If you are comfortable doing so, report the matter to your supervisor. If you feel that you cannot discuss a particular situation with your supervisor, discuss it with any of the following resources:

- Another supervisor with whom you feel comfortable
- A member of our Human Resources Department
- A member of our Legal Department
- Any Company executive officer
- The Ethics Hotline "Domino Direct," at (877) 874-4891.

(Copeland Aff. at ¶ 2, Ex. 1, Code, at 5.)⁸

2. Mayo-Coleman

Mayo-Coleman began employment with American Sugar as a Consumer Packaging Operator in July 1988. Currently, she holds the position of Storeroom Assistant in the Engineering Department. In that role, she assists in the operation of the Mechanical Storeroom, and has responsibility for, among other things, unloading receiving material from trucks for delivery to the Store Room; maintaining a running inventory of material on hand, received and issued; issuing tools and other equipment for use by work crews; and placing material in appropriate storage spaces. Mayo-Coleman is a member of Local 74 of the United Service Workers Union, and served as a Union Delegate in the past. (Affidavit of Debbie Troche, Human Resources Representative ("Troche Aff."), at ¶ 2, Ex. 1, Storeroom Assistant job description); (Jandovitz Aff. at ¶ 2, Ex. 1, June 24, 2002 letter to Company from Local 1814's Secretary Treasurer announcing Mayo-Coleman's election to Union Delegate position.)

Mayo Coleman's Agreement To Comply With The Code's Requirements, Including To Report Any Actual Or Apparent Code Violations

On February 16, 2010, Mayo-Coleman signed an acknowledgment that she read and understood the Code, agreed to observe the policies it sets forth, and to report actual or apparent violations of the Code in accordance with the Company's complaint procedure. (Copeland Aff., Ex. 2, Mayo-Coleman's signed acknowledgement.) As explained in more detail below, however, despite the fact that Mayo-Coleman was aware of the Company's policies against discrimination, harassment and retaliation, and the numerous avenues available for her to report a real or potential violation of those policies, Mayo-Coleman unreasonably delayed until August

⁸ The Code provides that employees may confidentially report a concern about a Code violation by calling the Company's toll-free phone number, known as "Domino Direct." (Copeland Aff., Ex. 1, Code, at 3, 5, 17.)

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13, 2012, to notify Human Resources about her discrimination and harassment allegations against her then-supervisor, Tyrone Smith. Additionally, Mayo-Coleman unreasonably withheld pertinent information about her allegations from the Company during its internal investigation. (Troche Aff. at ¶ 7); (Jandovitz Aff. at ¶ 13); (Copeland Aff. at ¶ 10.)

B. Response To Mayo-Coleman's September 7, 2012 Sworn Allegations

As detailed below, there is simply no evidence to support Mayo-Coleman's allegations of sex discrimination, sexual harassment and retaliation. American Sugar responds to each of the allegations asserted by Mayo-Coleman in her sworn EEOC statement, dated September 7, 2012, as follows:

ALLEGATION #1:

I am female and because of this I am being sexually harassment and retaliated by my Supervisor, Tyrone Smith.

RESPONSE:

American Sugar admits, upon information and belief, that Mayo-Coleman is female; however, the Company vehemently denies that she was subject to unlawful discrimination, harassment or retaliation based on her sex or any protected status. After conducting a comprehensive investigation concerning Mayo-Coleman's discrimination and sexual harassment allegations against her then-supervisor, Tyrone Smith, the Company determined that her allegations were unsubstantiated. As set forth below, the evidence supports that determination, and shows the following:

Mayo-Coleman took a leave of absence from June 6, 2012, until she returned to work on August 13, 2012. Before she returned, she sent a letter to Human Resources Regional Manager Bob Jandovitz, dated, August 9, 2012, stating only generally, that she wanted to "return to a work environment free of stress, sexual harassment and discrimination." As a result of receiving that letter, Human Resources Representatives Bob Jandovitz and Debbie Troche scheduled a meeting with Mayo-Coleman, and met with her, on her first day back to work, August 13, 2012. (Jandovitz Aff., ¶ 12, Ex.6, August 9, 2012 letter from Mayo-Coleman to Jandovitz); (Troche Aff. ¶ 6.)

At the August 13, 2012 meeting, Jandovitz asked Mayo-Coleman to explain, as referenced in her August 9, 2012 letter, what creates stress on her job, and to explain her claims of harassment and discrimination, and whether there were any accommodations that the Company could provide her. In response, Mayo-Coleman notified Jandovitz and Troche that she

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believed that her then-supervisor, Tyrone Smith, had subjected her to sexual harassment and sex discrimination.⁹ (Jandovitz Aff. ¶¶ 11-17); (Troche Aff. ¶¶ 7-11.)

Mayo-Coleman provided Jandovitz and Troche the following information concerning her allegations about Smith:

He would call her into his office to yell and scream at her when she didn't get her work done, even though she was under a lot of stress at work to accurately complete a lot of work in a short amount of time;

He spoke to her with contempt and disrespect;

He made inappropriate comments to her about her butt and boobs, called her an "old coon," and commented about what he would do to her if she wasn't so old;

He "nags her," but not the guys in her Department;

He complained about her playing her radio low during inventory, but allowed someone else to play loud and inappropriate rap music; and,

He discriminated against her because he wouldn't assign her overtime work performing Fire Watch duties with the Pipefitters.

(Jandovitz Aff. ¶ 14.)

In response to Mayo-Coleman's complaint about Smith, Jandovitz asked her if she would like to be transferred to a different shift or position. Mayo-Coleman declined that offer, however, explaining that she could avoid Smith most of the time by going into the back room.¹⁰

⁹ Smith began employment with American Sugar, and his supervision over Mayo-Coleman, on January 21, 2008. While employed by the Company, Smith held the position, MRP Controller ("MRP" stands for Material Replenishment Planning), and he supervised four (4) Storeroom Assistants (Mayo-Coleman and three (3) male employees), in the Engineering Department at the Company's plant in Yonkers. On May 13, 2013, Smith separated employment from the Company.

¹⁰ Although she did not report any additional incidents of alleged harassment or discrimination, on October 18, 2012, Mayo-Coleman expressed to Jandovitz that she wanted a break from working with Smith, and she requested a temporary two-week transfer to the Sanitation Department. The Company granted her request. During the time that she worked in the Sanitation Department, the Company further accommodated her by maintaining her level of pay, despite the fact that the position she transferred into paid less. On October 22, 2012, however, Mayo-Coleman complained that her transfer to the Sanitation Department negatively affected her ability to earn overtime compensation, since the overtime assignment in that Department required the ability to operate a forklift, and she was unable to perform that duty. Consequently, Mayo-Coleman asked to return to her position in the Store Room. The Company also

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Jandovitz also asked Mayo-Coleman why she didn't complain to Human Resources about Smith sooner. In response, she explained that she tried to avoid making a complaint to Human Resources, and that she wanted to try to resolve the issue through her Union, but her Union representative didn't help her. (Jandovitz Aff. ¶¶ 15-16.)

At the end of their meeting, Jandovitz and Troche thanked Mayo-Coleman for her time and told her that the Company would conduct an investigation and would have additional contact with her concerning her allegations. Jandovitz and Troche also asked Mayo-Coleman to notify them if she had any additional concerns. (Jandovitz Aff. ¶ 17, Ex. 7, Notes of meeting with R. Coleman on August 13, meeting to discuss letter dated August 9, 2012); (Troche Aff. ¶ 11.)

After the August 13, 2012 meeting, Mayo-Coleman did not report any other concern or alleged incidents of sexual harassment, sex discrimination or retaliation to Jandovitz or Troche. (Jandovitz Aff. at ¶ 18); (Troche Aff. at ¶ 12.)

Moreover, in between August 13, 2012 and August 20, 2012 (when Human Resources Regional Manager Nicole Copeland began her investigation of Mayo-Coleman's allegations), Jandovitz saw Mayo-Coleman at least three (3) times in the parking lot at work, and, each time, he stopped to speak with her and inquire how she was doing in her work environment. Mayo-Coleman's response was the same each time, in that she told Jandovitz that she was focusing on doing her job and trying to avoid Smith. During those conversations, she never reported any additional concerns or alleged incidents of sexual harassment, sex discrimination, or retaliation. (Jandovitz Aff. at ¶ 19.)

The Company's Investigation Concerning Mayo-Coleman's Claims

A prompt and thorough investigation was conducted by the Company's Regional Manager of Human Resources, Nicole Copeland. During the course of the investigation, Copeland met with several individuals, including, Mayo-Coleman and her Union Representative, Assistant Chief Steward Adolph McBean, Jandovitz, Smith, Troche, two of Mayo-Coleman's Storeroom Assistant co-workers, Reagan Shepherd and Clark Simpson, and two Maintenance Supervisors, Juan Vizcaino and Liz Mendonca. (Copeland Aff. at ¶ 4.)

Copeland's Interviews With Mayo-Coleman; And Mayo-Coleman's Refusal To Fully Cooperate

Copeland met with Mayo-Coleman on August 20 and 21, 2012. During those meetings, Mayo-Coleman complained that Smith had subjected her to sexual harassment; and that she had been denied overtime work based on her sex. (Copeland Aff. at ¶ 5.)

granted that request. (Jandovitz Aff. at ¶ 20, Ex. 8 (Mayo-Coleman's written request for a two-week transfer to the Sanitation Department, dated October 18, 2012).)

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With respect to the overtime issue, Mayo-Coleman explained two bases for her claim: (1) comments allegedly made on June 9, 2011, by former Maintenance Supervisor Fred Panicci and Human Resources Representative Debbie Troche, to the effect that Mayo-Coleman could not perform overtime Fire Watch duties assisting the Pipefitters because she was a woman¹¹; and (2) she was denied overtime Fire Watch assignments in favor of male co-workers in her Department, despite the fact that they had less seniority than her. (Copeland Aff. at ¶ 6.)

Additionally, the information that Mayo-Coleman disclosed to Copeland concerning her sexual harassment claim was substantially the same as what she had disclosed to Jandovitz and Troche on August 13, 2012. Mayo-Coleman complained to Copeland that Smith made inappropriate comments to her during the month of February 2012, including telling her that: (1) she has a “fat juicy ass,” (2) her “boobs were getting big,” (3) “[y]ou’re nothing but an old coon;” and, (4) “[y]ou have a big ass. I would tap that ass if you weren’t so old.” Mayo-Coleman also complained that Smith stared at her private areas. (Copeland Aff. ¶ at 7.)

Further, Mayo-Coleman claimed that Smith sent her a “derogatory” email on October 21, 2011, and she provided a copy of it to Copeland. That email, however, was not sexual or discriminatory in nature. Consequently, Copeland determined that the email did not support Mayo-Coleman’s allegations. (Copeland Aff. at ¶ 8, Ex. 3, Smith’s October 21, 2011 email to Mayo-Coleman.)

Notably, Mayo-Coleman told Copeland that Smith’s sexually harassing conduct seemed to have stopped as of May 4, 2012, when she complained to Human Resources that she had been improperly passed over for overtime opportunities. (Copeland Aff. at ¶ 9.)

Moreover, while Mayo-Coleman provided Copeland some details about her sexual harassment allegations, she refused to disclose certain information that she claimed supported her allegations. Specifically, although Mayo-Coleman claimed that her allegations could be corroborated by a female contractor who allegedly overheard Smith making a rude comment to her, Mayo-Coleman refused to provide Copeland with information concerning the witness’ name, the comment overheard, and the date of the incident. Mayo-Coleman claimed that she could not disclose that information because the witness was unwilling to speak with the Company, and would only talk with Mayo-Coleman’s attorney. (Copeland Aff. at ¶ 10.)

Further, Mayo-Coleman told Copeland that her attorney specifically instructed her not to disclose to the Company all the relevant details of her sexual harassment complaint, including, the substance and timing of certain comments allegedly made by Smith. (Copeland Aff. at ¶ 10.)

¹¹ Mayo-Coleman’s claim concerning comments allegedly made on June 9, 2011, is time-barred by the 300 day statute of limitations.

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Copeland's Interview With Mayo-Coleman's Union Representative; And His Explanation To Mayo-Coleman In May 2012 That Her Discriminatory Overtime Claims Were Unfounded

On August 21, 2012, Copeland met with Mayo-Coleman's Union Representative, Adolph McBean. He explained that, in May 2012, Mayo-Coleman complained to him that the Company had improperly bypassed her for overtime opportunities in favor of male employees with less seniority. At that time, McBean explained to Mayo-Coleman that the CBA required overtime opportunities in the Engineering Department to be shared among the employees of that Department regardless of seniority. However, because Mayo-Coleman apparently would not accept McBean's explanation concerning the procedure for overtime distribution, she requested to meet with Human Resources Regional Manager Bob Jandovitz. (Copeland Aff. at ¶ 12.)

McBean told Copeland that, in the beginning of June 2012, he and Mayo-Coleman met with Jandovitz to discuss her overtime concerns. During that meeting, Jandovitz confirmed for Mayo-Coleman what McBean had already explained to her--- that the CBA required overtime opportunities in her Department to be shared. Further, McBean explained to Copeland that, as a result of Jandovitz' explanation, it appeared to McBean as though Mayo-Coleman had gained an understanding of the proper procedure for the distribution of overtime assignments in her Department, and that, consequently, she understood that her complaint about overtime distribution was unfounded. (Copeland Aff. at ¶ 13.)

Further, McBean provided Copeland with additional insight and information concerning Mayo-Coleman's sex discrimination complaint premised on her allegations that she was denied opportunities for overtime Fire Watch work. McBean told Copeland that Mayo-Coleman admitted to him and others that she was not able to perform the heavy lifting required by the Fire Watch assignment, and she did not want that assignment. McBean further explained to Copeland that, Mayo-Coleman made it well known to him and others that, what she really wanted, was for the Company to respect her seniority by going through the futile exercise of offering her the overtime assignments, regardless of her lack of ability or desire to do the overtime work offered. (Copeland Aff. at ¶ 14.)

With respect to Mayo-Coleman's sexual harassment claim, McBean told Copeland that, he had a conversation with Mayo-Coleman in early June 2012, during which he had suggested to her that she should speak with Jandovitz about any concerns that she may have had about working with Smith. According to McBean, however, Mayo-Coleman told him, in words or substance, that she did not want to speak with Jandovitz at that time because she was "building up a file on Smith." (Copeland Aff. at ¶ 15.)

Copeland's Interview With Debbie Troche

On August 23, 2012, Copeland met with Troche to discuss Mayo-Coleman's allegations. Troche unequivocally denied that she had ever made any implicit or explicit comment to, or about, Mayo-Coleman to the effect that she could not perform overtime Fire Watch duties because she was a woman. Troche explained to Copeland that she had met with Mayo-Coleman

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and Fred Panicci approximately two (2) years prior (August 2010), to address a complaint that she had then that she had been denied overtime Fire Watch work. During that meeting, Troche and Panicci reviewed the requirements of the overtime Fire Watch assignment, which involve, among other things, heavy lifting of pipe. Mayo-Coleman acknowledged that she was unable to do the assignment because of the heavy lifting, but insisted that the Company was nevertheless required to ask her whether she wanted the overtime assignment before other employees with less seniority were offered that work. (Copeland Aff. at ¶ 16); (Troche Aff. ¶¶ 14-16, Ex.2, Fire Watch Job Description.)

Additionally, with respect to Mayo-Coleman's sexual harassment allegations, Troche informed Copeland that, prior to August 13, 2012, Mayo-Coleman had never brought her sexual harassment complaint about Smith to the attention of Human Resources. (Copeland Aff. at ¶ 17) (Troche Aff. at ¶ 16); (Jandovitz Aff. at ¶ 13.)

Copeland's Interview With Tyrone Smith

On August 23, 2012, Copeland interviewed Tyrone Smith. With respect to Mayo-Coleman's sexual harassment claim, Smith emphatically and categorically denied every allegation she made against him. (Copeland Aff. at ¶ 18).¹²

Moreover, during the course of discussing Mayo-Coleman's sexual harassment allegations and the work environment in Smith's Department, Smith requested Copeland's assistance in addressing a situation involving an employee he supervised, Reagan Shepherd, who had posted inappropriate pictures of women around the workplace.¹³ In a somewhat ironic development, Smith learned that Mayo-Coleman was the source of the inappropriate pictures, having cut them out of magazines and given them to Shepherd for display at work. (Copeland Aff. at ¶ 18.).¹⁴

Additionally, with respect to Mayo-Coleman's claim that she had been passed over for overtime opportunities in favor of employees with less seniority, Smith explained (consistent with the explanations provided by McBean and Jandovitz), that, according to the CBA, overtime in the Engineering Department must be assigned on a shared basis, and not based on seniority, as Mayo-Coleman incorrectly claimed. Moreover, Smith confirmed that it was well known that

¹² Later on too, in April 2013, during a conversation with Troche, Smith remained unequivocal in his emphatic denial of Mayo-Coleman's allegations of sexual harassment, sex discrimination and retaliation. (Troche Aff. at ¶ 17.)

¹³ Some of the postings were of pictures of scantily clad celebrity women. (Copeland Aff. at ¶¶ 19-20, Ex. 4, copy of confiscated pictures.)

¹⁴ That same day, Copeland and Troche addressed the situation by removing the pictures and counseling Reagan Shepherd that the pictures were inappropriate for display in the workplace. Copeland did not confront Mayo-Coleman to confirm whether she was, in fact, the source of the inappropriate pictures. Copeland determined that Smith's allegations were outside the scope of her investigation concerning Mayo-Coleman's sexual harassment and discrimination allegations. (Copeland Aff. at ¶¶ 19-20, Ex. 4, copies of confiscated pictures.)

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Mayo-Coleman could not perform the physically demanding aspects of the overtime Fire Watch assignment, and therefore, she could not be selected for that work. (Copeland Aff. at ¶ 21.)

Smith also explained that, prior to the time that former Maintenance Superintendent Fred Panicci retired, he frequently, and without Smith's knowledge, offered Mayo-Coleman overtime assignments based on her seniority. Once Panicci retired, however, Mayo-Coleman was no longer given preference for overtime assignments based on her seniority. Rather, overtime in the Department was properly distributed on a shared basis. (Copeland Aff. at ¶ 22.)

Copeland's Review Of Payroll Records Conclusively Refuting Mayo-Coleman's Claim That She Was Denied Overtime Assignments Based On Her Sex

As part of her investigation, Copeland also reviewed payroll records showing the amount of overtime worked by each of the four employees in Mayo-Coleman's Department. Those records demonstrate that Mayo-Coleman ranked second in her Department for the highest amount of overtime hours worked in the years 2011 (863.75) and 2012 (559.50), and that, for the year 2013, overtime hours were being shared in the Department, as required by the CBA. (Copeland Aff. ¶ 23, Exs. 5, 6, 7, 8 (payroll records concerning Mayo-Coleman, Reagan Shepherd, Clark Simpson, and Michael Cronin, respectively).)

Furthermore, while Company payroll records show that Mayo-Coleman's male co-worker, Reagan Shepherd, worked more overtime than her in years 2011 (1,024) and 2012 (853), that evidence does not substantiate her discrimination claim, where the record also reveals that, during the same years, she was assigned more overtime than her two other male co-workers, Clark Simpson and Michael Cronin. (Copeland Aff., Exs. 5, 6, 7, 8 (payroll records concerning Mayo-Coleman, Reagan Shepherd, Clark Simpson, and Michael Cronin, respectively).)¹⁵

¹⁵ Because Mayo-Coleman is unable to provide specific evidence of disparate treatment in the assignment of overtime work, the EEOC should dismiss her sex discrimination claim. See Aiello v. Stamford Hosp., 09 Civ. 1161(VLB), 2011 WL 3439459, at *12-*13 (D. Conn. Aug. 08, 2011) (dismissing plaintiff's claim alleging disparate treatment in the assignment of overtime work because he did, in fact, receive a significant amount of overtime in comparison with other employees) (affirmed, 487 Fed. Appx. 677 (2d Cir. Nov. 8, 2012).) See also Turley v. ISG Lackawanna, Inc., No.06 Civ. 794S, 2011 WL 1104270, at *9 (W.D.N.Y. March 23, 2011) (plaintiff failed to demonstrate that he was treated unfavorably in the distribution of overtime work, where he received overtime assignments continuously from 2003 through 2008, and he often placed among the top half of employees for overtime hours worked.) See also Ramsey v. New York City Health & Hospitals Corp., No. 98 Civ. 1594, 2000 WL 713045, at *7 (S.D.N.Y. June 2, 2000) ("Considering that there is evidence that plaintiff made more money from over-time work than most other maintenance workers, the fact that an overtime job may have on various occasions been taken away from plaintiff and given to another maintenance worker is not evidence of a discriminatory employment practice adverse to plaintiff for purposes of his disparate treatment claim.")

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**Investigation Outcome: No Evidence Found
To Substantiate Mayo-Coleman's Allegations**

Copeland's investigation resulted in her determination that Mayo-Coleman's sexual harassment allegations against Smith could not be substantiated. First, Smith vehemently and unequivocally denied Mayo-Coleman's allegations. Second, while Mayo-Coleman claimed that someone witnessed Smith making an inappropriate comment to her, she refused to disclose the witness' identity to Copeland. Thus, Mayo-Coleman obstructed Copeland from contacting the alleged witness in order to verify the truth of her allegation. Third, contrary to Mayo-Coleman's belief, Smith's October 21, 2011 email did not constitute evidence of sexual harassment. Finally, Mayo-Coleman offered no additional support for her allegations -- and Copeland's investigation revealed none. (Copeland Aff. at ¶ 24.)

Furthermore, Copeland determined that Mayo-Coleman's sex discrimination claim, based on her complaints concerning overtime assignments, was unsubstantiated. First, contrary to Mayo-Coleman's belief, the CBA requires overtime work to be shared among the employees in the Engineering Department, rather than assigned based on seniority. Second, the Company's payroll records conclusively refuted Mayo-Coleman's discrimination claim. (Copeland Aff. at ¶ 25.)

On November 9, 2012, Copeland and Human Resources Representative Jason Graham met with Mayo-Coleman to inform her about the investigation results. Copeland explained to Mayo-Coleman that she was unable to verify her allegations. Copeland also explained to Mayo-Coleman that it would have been helpful to the investigation if Mayo-Coleman had revealed the identity of the person whom she claimed had witnessed Smith making an inappropriate comment to her. Coleman told Mayo-Coleman that she could still provide her with that information. However, Mayo-Coleman refused the invitation and claimed, once more, that the alleged witness was unwilling to speak with Copeland. (Copeland Aff. at ¶ 26.)

Additionally, Copeland informed Mayo-Coleman that she had met with Smith earlier that day (November 9, 2012), and, although Mayo-Coleman's allegations were unsubstantiated, Copeland reminded Smith about the Company's Anti-Harassment and EEO Policy, the Code of Ethics, and the CBA. Copeland also explained to Mayo-Coleman that, in order to ensure that assignments of overtime work to the Store Room employees would continue on a shared basis, as required by the CBA, the overtime distribution procedure had been updated to match the relevant CBA language. (Copeland Aff. at ¶ 27, Ex. 9 (undated draft letter from Copeland to Mayo-Coleman, memorializing their November 9, 2012 discussion.)

At the end of their November 9, 2012 meeting, Mayo-Coleman appeared visibly agitated, presumably because the investigation had not gone her way, and she blurted out her baseless, outrageous opinion that, if Smith had raped and beat her, but no tape recording existed to prove it happened, the Company would claim that it never happened. Mayo-Coleman then commented to Copeland, in words or substance that, "men can do anything to women and get away with it." Then, as she walked out of the meeting, Mayo-Coleman said that she was "disgusted." (Copeland Aff. at ¶ 28.)

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ALLEGATION #2:

I have been with the Respondent since 1988. In 2005 I was assigned to the Store Room as an attendant. My Maintenance Foreman was Freddie Pinichi who retired in October of 2011. The Maintenance Manager I worked with was Liz Madonco, but she transferred in Aug 2011.

RESPONSE:

For the limited purpose of responding to the Charge, American Sugar does not dispute the facts alleged.

ALLEGATION #3:

My supervisor, Tyrone Smith told me after Pinichi's departure that you will not have him to protect you now and give you your way. He immediately started being more disrespectful.

RESPONSE:

American Sugar denies these allegations. On April 16, 2013, in connection with the Company's investigation concerning Mayo-Coleman's Charge, Human Resources Representative Debbie Troche met with Smith in order to review the Charge allegations with him and ascertain his response. During that April 16, 2013 meeting, Smith categorically denied that he had engaged in any conduct towards Mayo-Coleman that was sexually inappropriate, discriminatory, or retaliatory. Additionally, Smith specifically denied Mayo-Coleman's allegations, as follows:

- He denied that he was ever disrespectful to Mayo-Coleman, and he denied that he told her after Pinicci's departure that, "you will not have [Pinicci] to protect you now and give you your way."
- He denied ever telling Mayo-Coleman that, "Your boobs are getting big"
- He denied ever telling Mayo-Coleman that, "I would hit you up if you weren't so old".
- He denied ever telling Mayo-Coleman that, "You have a fat juicy ass".
- He denied that he ever leered at Mayo-Coleman.

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- He denied that he ever touched Mayo-Coleman in any inappropriate way.
- He denied that he ever touched Mayo-Coleman's buttocks.

Further, with respect to Mayo-Coleman's allegations concerning payroll mistakes in 2006, 2007 and 2008, Smith represented to Troche that "[a]ny mistakes [he] was aware of [he] corrected immediately." (Troche Aff. ¶ 17.)

Additionally, American Sugar respectfully refers the EEOC to its Response to Allegation #1.

ALLEGATION #4:

I submitted a grievance on May 4, 2012 that was not responded to until June when I had a meeting with HR Director, Bob Jandowitz. Mr. Jandowitz told me he did not like grievances and I was not following the proper procedures and needed to meet with my supervisor first. I was not comfortable talking to the supervisor who was harassing me.

RESPONSE:

American Sugar denies these allegations. While Respondent acknowledges that Mayo-Coleman submitted a "Grievance Form" to Human Resources that was dated May 4, 2012, that correspondence was not considered as an official grievance by the Company or the Union because it was not submitted by Mayo-Coleman in accordance with the grievance procedure set forth in the CBA. (Jandovitz Aff. ¶¶ 3-4, Ex. 2, CBA, Art. 9 (Grievance Procedure); Ex. 3, Mayo-Coleman's May 4, 2012 Grievance Form.)

As a former Union Delegate, Mayo-Coleman was well aware of the steps she had to follow to submit an official grievance. The grievance procedure first requires the employee and her Union Representative to meet with the employee's supervisor in an attempt to resolve the employee's concern before an unresolved issue is to be documented as a grievance to be addressed by a Company Human Resources Representative. Here, Mayo-Coleman failed to meet with her supervisor prior to documenting her complaint on a Local 74, USWU Grievance Form, and submitting it directly to Human Resources. Consequently, the Grievance Form could not be accepted as an official grievance. (Jandovitz Aff. at ¶¶ 2-5.)

Furthermore, American Sugar denies that the Company did not respond to her May 4, 2012 Grievance Form until June 2012. That Grievance Form asserts Mayo-Coleman's allegation that, despite her greater seniority, she had been improperly passed over for overtime opportunities in favor of employees in her Department with less seniority. Upon receipt of the Grievance Form, Human Resources Regional Manager Bob Jandovitz confirmed with Smith and

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Mayo-Coleman's Union Representative, Assistant Chief Steward Adolph McBean, that the overtime complaint had never been raised with Smith. Jandovitz advised McBean that, in light of the fact that the grievance procedure had not been followed, Mayo-Coleman's May 4, 2012 "Grievance Form" would not be considered a grievance. McBean agreed with Jandovitz' position. (Jandovitz Aff. at ¶¶ 3-10.)

Additionally, in order to facilitate the proper grievance procedure, so that the Company could properly respond to Mayo-Coleman's complaint, on May 22, 2012, Jandovitz wrote an email to Smith advising him to meet with Mayo-Coleman and McBean. (Jandovitz Aff. ¶ 8, Ex. 4, May 22, 2012 email to Smith.) Thereafter, Smith met with Mayo-Coleman and McBean about Mayo-Coleman's overtime complaint. At that meeting, McBean agreed with Smith's conclusion that there was no basis for Mayo-Coleman's complaint because the CBA requires overtime in the Engineering Department to be distributed equally, regardless of seniority. (Copeland Aff. at ¶ 12.)

Mayo-Coleman, however, unreasonably refused to accept her own Union Representative's explanation that she had not been denied overtime opportunities, and she demanded to pursue the issue with Human Resources. Consequently, in June 2012, Jandovitz met with Mayo-Coleman and McBean, to discuss Mayo-Coleman's overtime complaint. (Copeland Aff. at ¶ 12); (Jandovitz Aff. at ¶¶ 9-10.)

Notably, at the June 2012 meeting, Mayo-Coleman did not make a complaint about sexual harassment against Smith. Rather, she only discussed her incorrect belief that she had been improperly passed over for overtime opportunities in favor of employees in her Department with less seniority. It was clear that Mayo-Coleman was operating under the misconception that the CBA required overtime opportunities to be given in accordance with employee seniority. Jandovitz and McBean resolved Mayo-Coleman's complaint by explaining to her that the CBA requires overtime to be shared among the employees in her Department, regardless of seniority. As a result, and contrary to Mayo-Coleman's misconception, the terms of the CBA do not entitle her to more overtime opportunities than the employees in her Department with less Company seniority. The June 2012 meeting concluded after Mayo-Coleman expressed her understanding that, in accordance with the CBA, overtime opportunities were to be shared among the employees in her Department. (Jandovitz Aff. ¶ 10); (Copeland Aff. at ¶ 13.)

Additionally, American Sugar respectfully refers the EEOC to its Response to Allegation #1.

ALLEGATION #5:

I was having such a problem being in this environment that I became physically sick and had to go out on a Medical leave on June 6, 2012. I returned back to work on August 13, 2012. Before I came back to work I sent a letter to HR stating that I want to return to a harassment free environment. HR stated they would conduct and investigation and get back to me. I do

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not feel comfortable at work and am getting no support from management.

RESPONSE:

American Sugar denies information and knowledge sufficient to form a belief as to the truth of Mayo-Coleman's allegation that, "[she] was having such a problem being in this environment that [she] became physically sick and had to go out on a Medical leave on June 6, 2012," except admits that Mayo-Coleman submitted to the Company what purported to be a doctor's note, dated, June 6, 2012, stating that she required a leave of absence until June 25, 2012. (Jandovitz Aff. ¶ 11, Ex. 5, Mayo-Coleman's June 6, 2012 doctor's note.)

Additionally, Respondent admits that Mayo-Coleman returned to work on August 13, 2012, and that, before she returned, she sent a letter to Human Resources Regional Manager Bob Jandovitz, dated, August 9, 2012, stating only generally, that she wanted to "return to a work environment free of stress, sexual harassment and discrimination." As a result of receiving that letter, Human Resources Representatives Bob Jandovitz and Debbie Troche scheduled a meeting with Mayo-Coleman, and met with her, on August 13, 2012, her first day back to work. (Jandovitz Aff. at ¶ 12, Ex. 6, August 9, 2012 letter from Mayo-Coleman to Jandovitz); (Troche Aff. ¶¶ 6-11.)

For further discussion about that August 13, 2012 meeting and the Company's internal investigation concerning Mayo-Coleman's allegations, American Sugar respectfully refers the EEOC to its Response to Allegation #1.

Additionally, given the Company's immediate response to the general concerns raised by Mayo-Coleman's August 9, 2012 letter; the fact that Jandovitz and Troche met with Mayo-Coleman about those concerns on her first day back to work (August 13, 2012), and they inquired whether any accommodations could be provided to her, including a change in schedule or shift (which she declined); and that Jandovitz made a good faith representation to her that the Company would conduct an investigation concerning her sexual harassment and discrimination allegations, it is unclear how Mayo-Coleman could possibly allege, with a straight face, that she was "getting no support from management."

ALLEGATION #6:

Prior events that transpired before my leave was, constant mistakes with my paycheck that did not get fixed for weeks, and my overtime payments that were held for weeks. I was also not given many opportunities for overtime because I was told women could not handle this type of work. By being denied this overtime it caused me to lose out on 5-6K. The two (2) male employees with less seniority that work with me in the

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Store Room are always given overtime. The overtime is allotted according to seniority per the CBA.

My supervisor, Tyrone Smith stated these things to me, while at work, “your boobs are getting big,” “I would hit you up if you weren’t so old,” and “you have a fat juicy ass.” He also leers at me and I’ve asked him to stop but to no avail. He once smacked my butt while at work.

RESPONSE:

American Sugar denies these allegations and respectfully refers the EEOC to its Responses above.

ALLEGATION #7:

Adjustments have had to be made to my paychecks in 2006, 2007, and 2008. I feel that Mr. Smith is the reason I have had so many mistakes to my paycheck.

RESPONSE:

American Sugar affirmatively states that Mayo-Coleman’s allegations concerning adjustments to her paychecks in 2006, 2007 and 2008 are time-barred by a 300 day statute of limitations. In New York, Title VII claims must be filed with the EEOC or dual-filed with the NYSDHR within 300 days of the alleged discriminatory act. See 42 U.S.C. § 2000e-5(e)(1). If a plaintiff fails to file a timely charge with the EEOC, the claim is time-barred. See Butts v. The City of New York Department of Hous. Preservation and Development, 990 F.2d 1397, 1401 (2d Cir.1993).

Here, Mayo-Coleman specifically alleges that the paycheck errors/adjustments she complains about occurred in 2006, 2007, and 2008. Additionally, in August 2012, when Mayo-Coleman met with Human Resources Regional Manager Nicole Copeland in connection with the Company’s internal investigation, Mayo-Coleman’s only complaint about an adjustment to her paycheck concerned a mistake allegedly made by Smith in 2008, which necessitated an upward adjustment to her pay to compensate her for fifteen (15) hours of overtime worked. (Copeland Aff. at ¶ 11.) Since Mayo-Coleman’s paycheck claims concern events alleged to have occurred beyond the 300 day statute of limitations, those claims are time-barred and should be dismissed.

Moreover, Mayo-Coleman’s paycheck claims otherwise fail on the merits. First, Mayo-Coleman’s claim that Tyrone Smith was responsible for mistakes to her paychecks before he even commenced his employment with American Sugar on January 21, 2008, is implausible. Furthermore, to the extent that Mayo-Coleman’s conclusory allegation about paycheck mistakes/adjustments can be construed as a claim of disparate treatment based on sex, the

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evidence does not prove that men in her Department fared better than her with respect to paycheck errors. Specifically, Company records demonstrate that, during the time period, October 20, 2011 to May 13, 2013 (when Smith separated employment), Mayo-Coleman's male co-worker, Reagan Shepherd, had thirteen (13) adjustments made to his paychecks, while Mayo-Coleman only had nine (9) paycheck adjustments. (Troche Aff. ¶¶ 18-19, Ex.3, Historical Edit Report showing paycheck edits for Smith's Department during the relevant time period.)

ALLEGATION #8:

For reasons I have listed above I believe I have been discriminated against due to my sex (female) in violation of the Title VII Civil Rights Act of 1964, as amended and other Federal, state and local anti-discrimination statutes.

RESPONSE:

American Sugar denies these allegations and respectfully refers the EEOC to its Responses above.

III. CONCLUSION

The evidence does not support Mayo-Coleman's claims, and her Charge should be dismissed for lack of probable cause for the following reasons:

- (1) A number of Mayo-Coleman's allegations are time-barred.
- (2) Mayo-Coleman's sexual discrimination claim fails as a matter of law because:
 - (a) Contrary to Mayo-Coleman's belief, the CBA requires overtime work to be shared among the employees in her Department, rather than assigned based on seniority;
 - (b) There is no evidence to support Mayo-Coleman's self-serving conclusory allegation that she was "not given many opportunities for overtime because [she] was told women could not handle this type of work." What's more, the Company's payroll records conclusively refute Mayo-Coleman's discrimination claim by demonstrating that she ranked second in her Department, consisting of four employees, for the highest amount of overtime hours worked during the relevant time period; and,
 - (c) American Sugar unequivocally denies that Mayo-Coleman was excluded from overtime work based on her sex. To the extent that Mayo-Coleman's allegation relates to the overtime Fire Watch assignment, the evidence demonstrates that Mayo-Coleman was unable to

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perform the heavy lifting required by the assignment, and that, in any event, she did not actually want that assignment.

(3) Mayo-Coleman's sexual harassment claim fails as a matter of law because:

(a) She suffered no tangible adverse job action. Mayo-Coleman is currently employed, and there is no evidence that she suffered any loss of pay attributable to any alleged unlawful discriminatory or retaliatory act;

(b) The alleged sexually harassing conduct was not severe, continuous or pervasive enough, as a matter of law, to create a hostile working environment.

In order to establish a hostile work environment claim, a plaintiff must show the following: (1) the alleged harassment was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment; and (2) a specific basis exists for imputing the objectionable conduct to the employer. See Augustin v. The Yale Club of N.Y. City, 274 Fed. App'x 76, 77 (2d Cir. 2008) (citing, Alfano v. Costello, 294 F.3d 365, 373-4 (2d Cir. 2002) ("[I]ncidents must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive.") When determining severity and pervasiveness, the Court considers the totality of the circumstances, including the frequency of the discriminatory conduct, its severity, whether it was physically threatening and humiliating rather than merely offensive, and whether the conduct unreasonably interfered with Plaintiff's work performance. See Patane v. Clark, 508 F.3d 106, 113 (2d Cir. 2007) (citation omitted). A plaintiff must demonstrate that "the workplace was so severely permeated with discriminatory intimidation, ridicule, and insult that the terms and conditions of her employment were thereby altered." Augustin, 274 Fed. App'x at 77 (citing, Alfano, 294 F.3d at 373). Episodic incidents are generally insufficient to constitute a hostile work environment; the incidents "must be sufficiently continuous and concerted in order to be deemed pervasive." Id. Moreover, a plaintiff must show that the hostility occurred because of her membership in a protected class. See Cunningham v. N.Y. State Dep't of Labor, 326 Fed. App'x 617, 620 (2d Cir. 2009); Brennan v. Metro. Opera Ass'n, 192 F.3d 310, 318 (2d Cir.1999).

"Title VII . . . does not set forth "a general civility code for the American workplace." Burlington Northern v. White, 548 U.S. 53 (2006) (internal citations omitted). "[T]he ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing" are not considered unlawful harassment. Faragher v. City of Boca Raton, 524 U.S. 775 (1998). See also Christoforou v. Ryder Truck Rental, Inc., 668 F.Supp. 294, 303 (S.D.N.Y. 1987) ("The law does not require an employer to like his employees, or to conduct himself in a mature or professional manner, or unfortunately, even to behave reasonably and justly when he is peeved.")

Here, Mayo-Coleman is unable to present sufficient evidence to demonstrate that she was subjected to conduct severe enough to constitute a hostile work environment. For starters, Mayo-Coleman does not allege, and she cannot reasonably establish, that her work environment was physically threatening. Mayo-Coleman's sexual harassment claim is based on a handful of

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incidents, the vast majority of which concern Smith's alleged inappropriate comments to her.¹⁶ See Litchhult v. USTRIVE2, Inc., 2011 WL 3877084, at *4 (E.D.N.Y. Sept. 1, 2011) (concluding team member's offensive comment insufficiently severe for purposes of hostile work environment claim and drawing distinction between physically threatening or humiliating conduct from that which is simply an offensive utterance); Faison v. Leonard St., LLC, No. 08-2192, 2009 WL 636724, at *4 (S.D.N.Y. Mar. 9, 2009) (dismissing a hostile work environment claim because "allegations of persistent shouting and a display of poor temperament are insufficient to state a plausible hostile-environment claim.")

Additionally, Mayo-Coleman cannot demonstrate that Smith's alleged conduct was continuous or pervasive, since she admitted that the inappropriate comments allegedly occurred during the **single one month time period of February 2012**.¹⁷ Furthermore, Mayo-Coleman admitted to Copeland that Smith's alleged sexually harassing conduct had stopped as of May 4, 2012, and Mayo-Coleman's Charge states that the last date that any alleged discriminatory conduct took place was May 31, 2012. Consequently, Mayo-Coleman cannot demonstrate the requisite severe, continuous and pervasive sexually harassing conduct necessary for a legally actionable hostile work environment claim. (See attached Exhibit A (copy of Mayo-Coleman's sworn allegations, dated September 7, 2012)); (Copeland Aff. at ¶¶ 7, 9.)

(c) American Sugar maintained a reasonable, effective policy and procedure designed to prevent and correct any alleged discrimination or harassment, and Mayo-Coleman unreasonably failed to take advantage of that policy, and impeded American Sugar's internal investigation of her claims by refusing to fully cooperate in its investigation.

Pursuant to the Supreme Court's decisions in Faragher and Burlington Indus., an employer can avoid liability for actionable sexual harassment by a supervisor where, as here, the Claimant suffers no tangible job detriment and the employer can show: (1) that it exercised reasonable care to prevent and promptly correct any unlawful conduct, and (2) the employee unreasonably failed to avail herself of any corrective or preventative opportunities provided by the employer. See Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998); Burlington Indus. v. Ellerth, 524 U.S. 742, 765 (1998).

Here, the evidence demonstrates that American Sugar exercised reasonable care to prevent and correct unlawful discrimination, harassment, and retaliation because, among other reasons: (1) the Company's policies and procedures prohibiting discrimination, sexual harassment and retaliation are published in the Code and distributed to all employees; (2) on August 13, 2013, upon learning of Mayo-Coleman's allegations of sexual harassment against

¹⁶ See Ex. A, Mayo-Coleman's sworn EEOC allegations, dated September 7, 2012 (attached hereto.)

¹⁷ During Mayo-Coleman's meetings with Copeland on August 21 and 22, 2012, Mayo-Coleman told Copeland that the comments were allegedly made by Smith during the single month time period of February 2012. Mayo-Coleman also admitted to Copeland that Smith's alleged sexually harassing conduct had altogether stopped as of May 4, 2012. (Copeland Aff. at ¶¶ 7, 9.)

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Smith, the Company immediately offered Mayo-Coleman the option of a shift or position transfer (which she declined at that time); and (3) the Company granted Mayo-Coleman's October 18, 2012 request for a two-week transfer to the Sanitation Department. (Copeland Aff. at ¶ 2, Ex. 1, Code); (Jandovitz Aff. at ¶¶ 15, 20, Ex. 8 (Mayo-Coleman's written request for a two-week transfer to the Sanitation Department, dated October 18, 2012).) See Barbau v. Credit Lyonnais Am. Servs., Inc., 97 Civ. 7991, 1998 U.S. Dist. LEXIS 20338, *12-13 (S.D.N.Y. Dec. 30, 1998) (holding promulgation and application of employer's equal opportunity policy describing internal complaint procedure constitutes reasonable effort to prevent discrimination.) See also Donovan v. Big V Supermarkets, Inc., 98 Civ. 2842, 1999 WL 615100 (S.D.N.Y. Aug. 12, 1999) (finding no issue of fact regarding maintenance of reasonable avenues of complaint where sexual harassment policy was maintained in the employee handbook.)

Additionally, the evidence shows that Mayo-Coleman unreasonably failed to take advantage of the Company's remedial procedures. Mayo-Coleman first complained of Smith's alleged sexual harassment to Human Resources on August 13, 2012, nearly one year after: (1) Freddie Pinicci's September 2011 retirement, which is when she claims that Smith started becoming more disrespectful towards her; and (2) approximately ten (10) months after Smith sent her the October 21, 2011 email, which she relies on as evidence of his alleged unlawful sexually harassing conduct. Such a lengthy delay alone demonstrates that Mayo-Coleman unreasonably failed to take advantage of American Sugar's preventive and corrective opportunities.¹⁸ (See attached Exhibit A (copy of Mayo-Coleman's sworn allegations, dated September 7, 2012); (Copeland Aff. at ¶ 8, Ex. 3, Smith's October 21, 2011 email to Mayo-Coleman.) See, e.g., See O'Dell v. Trans World Entertainment Corp., 153 F. Supp. 2d 378 (S.D.N.Y. 2001) (employer established absence of vicarious liability for alleged sexual harassment of female employee by supervisor, through showing that complaining employee made inadequate use of harassment procedures by waiting for almost one year after sexual advances were made to make complaint) (affirmed, 40 Fed. Appx. 628, 2002 WL 1560266 (2d Cir. July 16, 2002)); Dayes v. Pace Univ., No. 98 Civ. 3675, 2000 WL 307382, at *6 (S.D.N.Y. Mar. 24, 2000) (granting employer summary judgment on its Faragher / Ellerth defense where plaintiff delayed one year before reporting supervisor's harassment) (affirmed, No. 00-7641, 2001 WL 99831, at *3 (2d Cir. Feb. 5, 2001); Barua v. Credit Lyonnais-U.S. Branches, No. 97 Civ. 7991, 1998 WL 915892, at *5 (S.D.N.Y. Dec. 30, 1998) (same.)

Furthermore, after having complained to Human Resources about Smith's alleged sexually harassing and discriminatory conduct, Mayo-Coleman unreasonably failed to fully cooperate in the Company's internal investigation by refusing to disclose information relevant to her allegations to Copeland. See Woodward v. Ameritech Mobile Communications, Inc., No. IP 98-0744-C H/G, 2000 WL 680415, at *15 (S.D. Ind. Mar. 20, 2000) (granting employer summary judgment on its affirmative defense where plaintiff, on the advice of counsel, refused

¹⁸ Mayo-Coleman alleges that after Maintenance Foreman Fred Pinicci retired in October 2011, Smith "immediately started being more disrespectful" towards her. Despite that allegation, however, she waited until August 13, 2012 to avail herself of American Sugar's sexual harassment complaint procedure.

John B. Douglass
EEOC Investigator
October 30, 2013
Page 22

to participate in employer's investigation of sexual harassment.) Consequently, American Sugar will prevail on its Faragher/Ellerth affirmative defense, and Mayo-Coleman's claims should be dismissed.

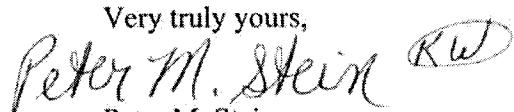
(3) Mayo-Coleman's retaliation claim fails as a matter of law because:

- (a) Her allegations are conclusory; and
- (b) She can offer no evidence to support her retaliation claim because none exists.

Finally, in addition to the above, and notwithstanding American Sugar's vehement denial of Mayo-Coleman's claims, it is indisputable that Smith's departure from the Company has, for all intent and purposes, resolved Mayo-Coleman's claims. In fact, Mayo-Coleman, herself, admitted as much in a conversation with Human Resources Regional Manager Bob Jandovitz on August 1, 2013. On that day, Mayo-Coleman reported to Jandovitz that, since Smith had separated from the Company on May 13, 2013, her work environment was much better, the employees in her Department were communicating better and working as a team, and her concerns about overtime distribution had also been resolved because her Department was following the proper procedure for overtime distribution in accordance with the CBA. (Jandovitz Aff. at ¶ 22.)

Based on the foregoing and enclosed affidavits and documentary evidence, American Sugar denies the allegations of sexual harassment, sex discrimination and retaliation as set forth in Mayo-Coleman's Charge, and requests that the Charge be dismissed in its entirety for lack of probable cause.

Very truly yours,


Peter M. Stein *RW*
Peter M. Stein

PMS:KEW:caj
Enclosures

RSJ

MEMORANDUM



to: R. Mayo

DATE: April 19, 1990

FROM: D. W. Brainard

SUBJECT: R. MAYO GRIEVANCE (29-90) - 3/28/90

Upon reviewing your grievance, the company finds the following:

The sugar which needed to be broken on 3/27/90 was created and situated on the fifth floor of building #16. The individuals who worked over were the brown sugar operators who worked the 8-4 shift on this floor, and who had created some of the sugar that required reprocessing. They were, therefore, properly asked to work over. You worked in the 5 lb. room on the day in question and were, therefore, not entitled to the overtime.

Based on the above, your grievance is denied.

DWB:bk

D. W. Brainard

cc: W. Raiola
W. McClane

GRIEVANCE FORM

LOCAL 1814, ILA

343 Court Street, Brooklyn, N.Y. 11231

29-90
THE 35 YEAR
DIVISION SLB PackagingMEMBER ROSANNA A.L. Mayo
(Please Print)EMPLOYER RSI
(Please Print)DEPARTMENT Brown Sugar SHIFT 8am to 4pmJOB Breaking Sugar Bags SENIORITY 1 1/2 656FOREMAN Jimmy RyanSHOP STEWARD RAYMOND GRASSINATURE OF GRIEVANCE people was ask to stay over
with less seniority, which I was never
asked. I also inform the foreman about
asking seniority people first. This isn't
the first time I wasn't asked first

AGREEMENT CLAUSE VIOLATED _____

SETTLEMENT REQUESTED 4 Hours over timeDATE 3/28/90Rosanna Mayo
EMPLOYEE'S SIGNATURE117 154 19003
SOCIAL SECURITY NUMBER

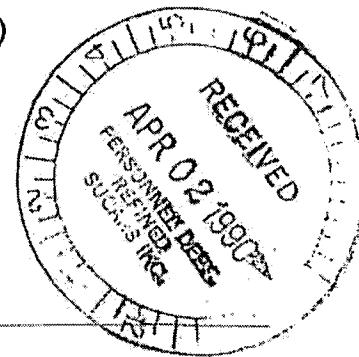
UNION REPRESENTATIVE

White Copy - Employer

Canary Copy - Member

Pink Copy - Union

Blue Copy - Legal





6
Memorandum

To: Rosanna Mayo Coleman
From: Bob Jandovitz *Bb*
Subject: Grievance # 7-96

Date: March 21, 1996

Upon reviewing your grievance the company finds the following:

On the day in question, Ed Loyola was already scheduled to come in to relieve you on the 2 lb. packer station and that morning Cliff Galang (H.S.B.) had called in sick. Jim Wallace tried to call Ed Loyola to inform him of a possible change of assignment, but couldn't get him.

At the unions request and when possible the company will not switch O.T. without notifying the employee before arrival at work. Jim honored this request and kept Ed assigned to the 2 lb. job. He then tried to get coverage for the high speed bagging position but no experienced operators were available, so S. Sancho worked 16 hours to cover his station.

Considering the above the company did not violate the contract and has denied your grievance.

cc: D. Brainard
T. McMahon
P. Forcelli

3-94 U1:15P RFP REFILED 09/09/07

7-96

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 11231

DIVISION

III

MEMBER Rosanna Mayo Coleman
(Please Print)EMPLOYER Refine Sugars

(Please Print)

DEPARTMENT 5LBSHIFT 12-8 AmJOB Machine OperSENIORITY 656FOREMAN Jim WallaceSHOP STEWARD Fred GaffneyNATURE OF GRIEVANCE Article 6 Section I

Sammy Sancho Relief call in sick, John Covered
 The Station with His oper Sammy & Ed Loyola from 8pm-12-12-4pm
 I STAY over for the packer in my station when Ed Came in
 At 12:00 Jim sent him to release me & sent me home, Jim Asked Sammy
 To Do 16 Hours, however I have seniority over Sammy & Ed
 AGREEMENT CLAUSE VIOLATED ARTICLE 6 SECTION I ARTICLE 2 SECTION 2

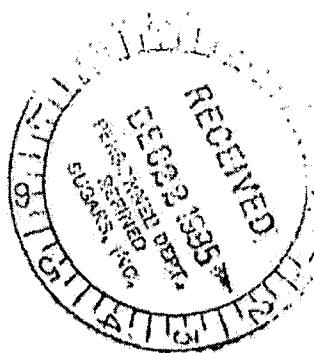
SETTLEMENT REQUESTED 4 hrs DOUBLE TIMEDATE Dec 30 1995Rosanna Coleman
EMPLOYEE'S SIGNATUREFred Gaffney
UNION REPRESENTATIVE117 154 19003
SOCIAL SECURITY NUMBER

White Copy - Employer

Canary Copy - Member

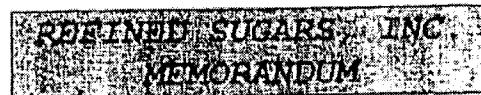
Pink Copy - Union

Blue Copy - Legal



3-99 01:15P REFINED SUGARS

8



TO: Rosanna Mayo-Coleman
FROM: Bob Jandovitz *BS*
DATE: October 1, 1999
RE: Grievance #58-99

Upon reviewing your grievance, the Company finds the following:

The old high speed bagging station is rarely operated and has been cleaned on both straight time and overtime by all 3 GMP employees assigned to Packaging. On the day in question, the GMP laborers were asked in seniority order, if they wanted to stay to clean the "old" station. The first employee refused. When Ram was asked, he accepted. The Supervisors scheduled the overtime properly.

Considering the above, your grievance is denied.

CC:
D. Brainard
D. Macone
T. McMahon
A. Vezzuto

RMI/sm

3-99 U-1107 Refined Sugars

014 300 4000

F-100

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 11231

#18-89

recd
7/23/59DIVISION 3MEMBER Rosanna Mayo-Coleman
(Please Print)EMPLOYER Refined Sugars
(Please Print)DEPARTMENT B. Sugar SHIFT 4-12JOB Packing SENIORITY 656 11 yearsFOREMAN Thom McNameeSHOP STEWARD AlbyNATURE OF GRIEVANCE From stay over to clean the
old high speed station I went to see why
I couldnt stay over to clean the stations
it was down for 12-8 shift he stay over
all the time I cannot had any over time
in about 3 months I also have seniority
AGREEMENT CLAUSE VIOLATED After 1 year this from gets overtime
ARTICLE 6 SEC 7 all the time ARTICLE 7 SEC 7SETTLEMENT REQUESTED 4 hrs 1/2DATE 7/20/99EMPLOYEE'S SIGNATURE Rosanna ColemanUNION REPRESENTATIVE Alby117 154 19003
SOCIAL SECURITY NUMBER

The American Sugar Refining Company

MEMORANDUM

July 3, 2002

To: F. Gaffney/L. Mayo-Coleman (For All PT1)

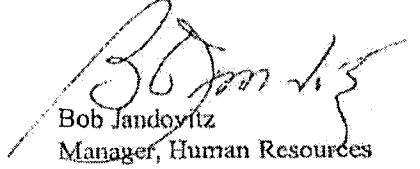
Cc: D. Brainard
K. Merritt
D. McFarland

From: Bob Jandovitz

Subject: Grievance # 31-01

Upon reviewing your grievance, the company finds the following:

The Company and Local 1814 have agreed that all training for open full time PT1 positions in packaging on the SIG and Hesser only, will be offered by polling the senior employees in the group.



Bob Jandovitz
Manager, Human Resources

BJ/mg



Domino®

1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

American Sugar Refining, Inc.

MEMORANDUM

April 7, 2003

To: Rosanna Mayo Coleman
Cc: Don Brainard Fred Gaffney
Dennis Mc Farland
From: Bob Jandovitz B6
Subject: Grievance # 08 - 03

Upon reviewing your grievance the company finds the following:

On the day in question packaging did not need an industrial bagger since we had an industrial relief employee on site. Industrial bagging was down due to lack of space in the warehouse. Packaging had enough coverage and your services weren't required.

Considering the above your grievance denied.



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Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 11231

OP-03

MJ
3/1/03DIVISION 3MEMBER Rosanna Mayo-Coleman
(Please Print)EMPLOYER American Sugar
(Please Print)DEPARTMENT Eng SHIFT 12-8JOB Tech 2 SENIORITY 7/10/88FOREMAN Dennis McFarlandSHOP STEWARD RosannaNATURE OF GRIEVANCE Claude Lewis worked in high speed on Dec. 26th for the Day. Why wasn't I called in to cover for Claude I was on 12 hours, But that never stop Maxine from working 16 hours with 2 people She had to break were as I had 3 people + a
AGREEMENT CLAUSE VIOLATED BREAK. AND wasn't called inSETTLEMENT REQUESTED I would like to get PAID for 4 hours Time+halfDATE 12/27/02EMPLOYEE'S SIGNATURE Rosanna MayoUNION REPRESENTATIVE Rosanna MayoSOCIAL SECURITY NUMBER 117 154 19003

American Sugar Refining, Inc.

MEMORANDUM

April 7, 2003

To: Claude Lewis
Mitch Wilson
Rosanna Mayo Coleman

Cc: Don Brainard Fred Gaffney
Dennis Mc Farland

From: Bob Jandovitz *BL*

Subject: Grievance # 09- 03

Upon reviewing your grievance the company finds the following:

On the day in question Will did bring up supplies and this work should have been offered to someone in Engineering. Upon review Will only performed the work in question for approximately 4 hours therefore Mitch Wilson will be paid 4 hours at time and one half.

1



1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 11231

09-03

MD
3/1/03DIVISION 3MEMBER Claude Lewis, Mitch Wilson, Rosanna Coleman
(Please Print)EMPLOYER American Sugars
(Please Print)DEPARTMENT Eng. SHIFT 8-4JOB Relief Oper Tech 2 SENIORITY 1988, 1982, 1988FOREMAN Dennis McFarlandSHOP STEWARD Rosanna Mayo ColemanNATURE OF GRIEVANCE Will was Bring up Supplies to Brown Sugar which he is in a Different Dept. Therefore the Company should have used the Tech Two, Mitch could have stay over Claude could have came in early & I could have stayed -til 8pm he did the job for 12 hours.
ARTICLE 2 SECTION 1 + 2SETTLEMENT REQUESTED We would like to get Paid 4 1/2 hour Time half. he has to ask the people in the Eng. Dept firstDATE 12/30/02EMPLOYEE'S SIGNATURE Mitch WilsonEMPLOYEE'S SIGNATURE Rosanna Mayo ColemanEMPLOYEE'S SIGNATURE Claude LewisUNION REPRESENTATIVE Rosanna Mayo Coleman

C. Lewis 101-54-8284

M. Wilson 247-98-7289

R. Mayo 117-54-9003

SOCIAL SECURITY NUMBER

American Sugar Refining, Inc.

MEMORANDUM

April 7, 2003

To: Rosanna Mayo Coleman

Cc: Don Brainard Fred Gaffney
Dennis Mc Farland

From: Bob Jandovitz
Subject: Grievance # 11 - 03

Upon reviewing your grievance the company finds the following:

We discussed the grievance in my office. It was determined that even though coverage was being scheduled once Sandru changed his mind after speaking with D. Mc Farland, the coverage wasn't required. You did not miss out on an overtime opportunity since the coverage was provided by the eligible employee.

Considering the above your grievance denied.



1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 112311/14,
MJ
3/1/03

DIVISION

3

MEMBER

Rosanna Coleman

(Please Print)

EMPLOYER

American Sugars

(Please Print)

DEPARTMENT

Enc.

SHIFT

12-8

JOB

Tech 2.

SENIORITY

656 154RS.

FOREMAN

Singh/Dennis McFarlen

SHOP STEWARD

Rosanna ColemanNATURE OF GRIEVANCE I was told at 7:45 I could stay over to do the relief job. Mitch Wilson was going to run 6x because Sandru wanted to go home at 8:00. Sandru said Dennis said he was to stay.

AGREEMENT CLAUSE VIOLATED

Article 6 Section d&E

SETTLEMENT REQUESTED

would like to be paid 4 hours time/half

DATE

3/29/03

EMPLOYEE'S SIGNATURE

Rosanna Mayo-Coleman

SOCIAL SECURITY NUMBER

117 154 1903

UNION REPRESENTATIVE

Rosanna Mayo-Coleman

American Sugar Refining, Inc.

MEMORANDUM

May 21, 2003

To: Rosanna Coleman
Cc: Don Brainard F. Gaffney
D. McFarland
From: Bob Jandovitz *B6*
Subject: Grievance #25 - 03

Upon reviewing your grievance the company finds the following:

The company has a long practice of trying to run/operate the refinery as efficiently as possible. This along with other management rights as mentioned in Article 3 Section A gives us the right to schedule as we did during the incident you cited in your grievance. Additionally we discussed this actual grievance with both Dennis McFarland and Fred Gaffney wherein Dennis stated that we didn't require your assistance since the warehouse was full and production had to be slowed down. Therefore breaks weren't required.

Finally Article 3 Sec B as cited in your grievance pertains to minimum hours of work upon reporting to work and does not apply here. Article 6 Sec H also cited in your grievance refers mainly to continuation of a job already being performed you were not performing the job in question. In your case the company had several options at their disposal and was not required to call you in.

Considering the above your grievance is denied.



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Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 1123125-03
9/16/03

DIVISION

3

MEMBER

Rosanna Coleman
(Please Print)

EMPLOYER

American Sugars
(Please Print)

DEPARTMENT

Pack

SHIFT

8-4 pm

JOB

Tech 2

SENIORITY

654

FOREMAN

Dennis McFarland

SHOP STEWARD

Rosanna Coleman

NATURE OF GRIEVANCE I was not Call in When
Claud Lewis went up to Brown at
4:00 to Run the Station. Could have
Call Me in to Do Claude Lewis JobAGREEMENT CLAUSE VIOLATED ARTicle 3 SEC B ARTicle 6 SECb

SETTLEMENT REQUESTED

4 hrs 1/2

DATE 3 1 281 03EMPLOYEE'S SIGNATURE Rosanna Coleman

SOCIAL SECURITY NUMBER

1 1

UNION REPRESENTATIVE Rosanna Mae Coleman

American Sugar Refining, Inc.

MEMORANDUM

November 17, 2003

To: Rosanna Mayo-Coleman

Cc: K. Merritt
D. Mc Farland
F. Gaffney

From: Bob Jandovitz *BB*

Subject: Grievance # 04-04

Upon reviewing your grievance the company finds the following:

The company has a long practice of trying to run/operate the refinery as efficiently as possible. This along with other management rights as mentioned in Article 3 Section A gives us the right to schedule as we did during the incident you cited in your grievance.

The consumer relief operator was brought in because the Sig and Hesser machines were operating and the position was required for breaks, garbage and relief, as in normal coverage. You were not required, since, do to the limited operation we did not need to provide breaks for the palletizer operator. Rather the palletizer could be shut down for breaks while the limited product queued up until the break was over. If an additional line was running such as the industrial brown or powder than you probably would have been called in.

Considering the limited operation, past practice and management rights the supervisors covered the shift correctly.

Considering the above your grievance is denied.



1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA
343 Court Street, Brooklyn, N.Y. 11231MJ
04-04
11/17/03DIVISION 3

MEMBER

Rosanna Mayo-Coleman

(Please Print)

EMPLOYER

American Sugars

(Please Print)

DEPARTMENT

PackSHIFT 12-8AM

JOB

Tech 2SENIORITY 16 years

FOREMAN

Dennis McFarlan

SHOP STEWARD

Alef ZancaNATURE OF GRIEVANCE I was told stay home on Sunday while the palletizer ran. I should have been in to give Palletizer opers his Break Con Relief Came in to do Relief in 5CB Room. why did ConRelief worked and not Shutdown for Breaks in the Room
AGREEMENT CLAUSE VIOLATED Article 6 Section H

SETTLEMENT REQUESTED

I would like to get paid for Sunday 8 hour dtDATE 11/12/03

EMPLOYEE'S SIGNATURE

UNION REPRESENTATIVE

Rosanna Mayo-ColemanSOCIAL SECURITY NUMBER 117-54-9003Frank Gaffney

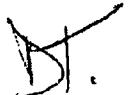
American Sugar Refining, Inc.

MEMORANDUM

March 4, 2004

To: Rosanna Mayo

Cc: K. Merritt
D. McFarland
F. Gaffney

From: Debbie Troche 
DT.

Subject: Grievance #08-04

Upon reviewing your grievance the company finds the following:

You should have continued to work the hours in question. Payroll will be contacted to pay you the settlement requested of 4 hours at time & one half.

Please process payment
for the above.

Debbie Troche
3/5/04

Domino
sugar

1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

GRIEVANCE FORM

LOCAL 1814, ILA

343 Court Street, Brooklyn, N.Y. 11231

8/04
MJ
1/13/04DIVISION 3MEMBER Rosanna Mayo
(Please Print)EMPLOYER American Sugars
(Please Print)DEPARTMENT PACK SHIFT 12^{AM} 12 PMJOB Tech 2 SENIORITY 15 1/2 yrsFOREMAN SinghSHOP STEWARD AlexNATURE OF GRIEVANCE I was Scheduled To work 8AM to 12 To Cover Vacation The open Shift was DAYS on 12/24/03 I was Sent home at 8AM. Singh Said Claude Lewis would Come Back Short Swing To Cover my Job I told him he was wrong & I Should S: he told me I had To go Home
AGREEMENT CLAUSE VIOLATED ARTICLE 2 SECTION 2 ARTICLE 6SETTLEMENT REQUESTED I would like to get PAID 1 1/2 hours Time + half.DATE 12/29/03Rosanna Mayo
EMPLOYEE'S SIGNATURESOCIAL SECURITY NUMBER | |Rosanna Mayo-Colman
UNION REPRESENTATIVE

White Copy - Employer

Canary Copy - Member

Pink Copy - Union

Blue Copy - Legal

American Sugar Refining, Inc.

MEMORANDUM

July 16, 2004

To: Rosanna Mayo

Cc: D. Brainard
B. Jandovitz
K. Merritt
D. McFarland
F. Gaffney

From: Debbie Troche

Subject: Grievance #24-04



Upon reviewing your grievance the company finds the following:

One of the responsibilities of a GMP employee is to clean the machines when they are running. For example, it has been agreed by both the company and the union that the GMP employees would clean the pulverizing station if it runs on a Saturday but if it was down on Sunday, the operator would do the cleaning therefore, the GMP employees are not crossing over into the Engineering department when they are cleaning machines. The alley ways are also part of the GMP responsibilities and as such when they need to be cleaned the GMP employees are assigned.

Considering the above your grievance is denied.



1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

American Sugar Refining, Inc.

Memorandum

November 3, 2004

To: Rosanna Mayo

Cc: D. Brainard
B. Jandovitz
K. Merritt
D. McFarland
F. Gaffney

From: Debbie Troche

Subject: Grievance 35-04

Upon reviewing your grievance the company finds the following:

Each week, after the schedule is posted, the operators have always been allowed to switch shifts to cover any existing vacancies. The two employees in the rotation decided to cover the shift on an 8 to 8 schedule. A Pack Tech 2 was asked to come in at 8:00 p.m. (4 hours early) to cover the shift and refused therefore the PT 1 covered the shift from 8:00 p.m. to 8:00 a.m.

Considering the above your grievance is denied.

Domino
sugar

1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: (914) 963-1030

American Sugar Refining, Inc.

MEMORANDUM

August 10, 2005

To: M. Langone
M. Wilson
C. Lewis
M. Cohen
R. Coleman
G. White

Cc: D. Brainard
R. Jandovitz
K. Merritt
D. MacFarland
F. Gaffney
R. Mayo

From: Debbie Lafaro 

Subject: Grievance # 06-05

Upon reviewing your grievance the company finds the following:

The staffing requirements for Packaging are 12 Packaging Laborers, 28 PT 1's and 3 Electrical Technicians. The Packaging department currently has 6 openings for qualified PT 1's and 2 PT 1 positions remain open due to workers' comp and a family emergency. Therefore, the department is operating with 8 less PT 1's. We have been in touch with the union throughout the return to work process. They are well aware of the situation in packaging and the fact that we can and will continue to utilize supervisors to perform tasks as long as employees work 40 hours in a week and while we are shorthanded.

Considering the above your grievance is denied.

GRIEVANCE FORM

LOCAL 1814, ILA

343 Court Street, Brooklyn, N.Y. 11231

06-05
D. J. DICKDIVISION III

MAXINE LANGONE MITCH WILSON, CLAUDE LEWIS

MEMBER ~~ESLIE MOLLINS MIKE COHEN ROSANNA COLEMAN GODFREY WHITE~~
(Please Print)EMPLOYER AMERICAN SUGARS INC
(Please Print)DEPARTMENT Packaging SHIFT ALLJOB Tech II SENIORITY FOREMAN MANAGEMENTSHOP STEWARD Fred GAFFNEYNATURE OF GRIEVANCE The Tech II position was eliminated
Then why is The Foreman Rubin Doing the
Breaks, that Job was a Union Jurisdiction Job
The Foreman is Working 12 Hours a Day Doing
Union Work, when members are still out of work,AGREEMENT CLAUSE VIOLATED ARTICLE 13ARTICLE 2 SEC 7SETTLEMENT REQUESTED UNION WANTS THESE JOBS RESTOREDOR SOME OF THE JOBS RESTORED WITH BACK PAY THEY
TOOK A PAY CUT TAKING LESSER PAYING JOB AND ALSO USE
THE RECALL LISTDATE Aug 13 105

EMPLOYEE'S SIGNATURE

Fred Gaffney
UNION REPRESENTATIVE

SOCIAL SECURITY NUMBER

White Copy - Employer

Canary Copy - Member

Pink Copy - Union

Blue Copy - Legal

American Sugar Refining, Inc.

MEMORANDUM

September 20, 2005

To: Rosanna Mayo-Coleman

Cc: D. Brainard
B. Jandovitz
K. Merritt
C. Ortiz
J. Cordova
R. Hernandez
F. Gaffney

From: Debbie Lafaro

Subject: Grievance #13-05



Upon reviewing your grievance the Company finds the following:

The summer temps began working in early June to assist with the project of relocating the inventory of the packaging storeroom to the main storeroom. This project consisted of physically moving parts from one area to another, tearing down old shelves and installing new ones, counting the items that were brought over and labeling. During their time here the temps never performed work normally performed by union employees nor, with the exception of one Saturday which you also worked, never worked any overtime. Please be advised that you did work and got paid for 22.25 hours of overtime for the week of 8/15/05.

Considering the above your grievance is denied.

GRIEVANCE FORM

LOCAL 1814, ILA

343 Court Street, Brooklyn, N.Y. 11231

13-05
Dt. 9/15/05DIVISION 3MEMBER Rosanna Coleman
(Please Print)EMPLOYER American Sugars
(Please Print)DEPARTMENT Eng. SHIFT 8 7:00-3:30JOB Store Room SENIORITY 654FOREMAN Carlos Ortiz

SHOP STEWARD

NATURE OF GRIEVANCE I was to stay over to do inventory in the store room. I was sent home at 5:00. I was told that the inventory was for someone else and I should have the job before someone out side of the store room.

the college student + temp stay to do my work 8/19/05

AGREEMENT CLAUSE VIOLATED Article 6 8/20/05

SETTLEMENT REQUESTED I want to get paid for the week of 8/11/05 and 8/12/05
get paid for 8/11 + 8/12 the week of 8/15/05

DATE 8/12/05EMPLOYEE'S SIGNATURE Rosanna ColemanSOCIAL SECURITY NUMBER | |UNION REPRESENTATIVE Freel Goffree

American Sugar Refining, Inc.

MEMORANDUM

July 12, 2006

To: Rosanna Mayo Coleman

Cc: D. Brainard
B. Jandovitz
K. Merritt
J. Cordova
P. Haenchen
F. Gaffney

From: Debbie Lafaro

Subject: Grievance #26-05



Upon reviewing your grievance the Company finds the following:

As per Article 13 of the CBA, “.....these employees (supervisors) shall not perform work that would deprive an active employee of the opportunity to work that individual’s *regularly scheduled work hours*.”

Your settlement request to get paid is denied. As per your request to have the hours made up, since May 1st you have worked overtime the following weeks:

Week Ending	# of Overtime hours
May 7, 2006	12.5
May 21, 2006	21.5
June 11, 2006	8
June 18, 2006	16
June 25, 2006	8
July 6, 2006	7

Therefore, the make up assignment has been provided.

LOCAL 1814, ILA
 70 20th STREET
 BROOKLYN, NEW YORK 11232
 (718) 499-9600

16-55
 1/6/14
 10:20 AM

DIVISION

MEMBER

Rosanna Coleman

(Please Print)

EMPLOYER

American Sugars

(Please Print)

DEPARTMENT

Store Room

SHIFT

JOB

Oper.

SENIORITY

FOREMAN

Carlos Ortiz

SHOP STEWARD

Chris Moczyolowski

NATURE OF GRIEVANCE The week of May First Joe + Carlos Cleared & Put away Motors from Building 25 A which we the Oper did not have 40 hours in yet therefore we should have done the work. They worked 12 hours

AGREEMENT CLAUSE VIOLATED Article 13

SETTLEMENT REQUESTED I want to get Paid for it or the hour's made up to me

DATE

5/16/06

MEMBER'S SIGNATURE

Rosanna Cole
 Rosanna Cole

UNION REPRESENTATIVE

SOCIAL SECURITY NUMBER

1 1